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No. 731

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1963

PHILIP GIANOPULOS,
Petitioner,

vs.

THE STATE OF ILLINOIS,
Respondent.

On Petition for Writ of Certiorari to the Criminal Court of Cook County, Cook County, Illinois

REPLY TO THE RESPONDENT'S BRIEF BY THE PETITIONER

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PREAMBLE

The Respondent by counsel correctly states the formal decision of the court below (p. 1) and the statutes involved (p. 2). However, under "Jurisdiction" (p. 2), he endeavors to mislead this Honorable Court with the now old, but still rapturous, Illinois' cliche', "As a matter of State law and local procedure, *habeas corpus* is not available . . .", on admission that federal questions were properly before the criminal court of Cook County. Following by "Questions Presented" (pp. 2-3), alternative, trite and

new issues of evasion are introduced, perhaps, to foist burden, if not confusion, on petitioner and this August Court. The "Statement of Proceedings Below" (p. 3) does lack the "clear and convincing" essential facts; which are: that after being returned on June 13, 1962, by virtue of a parole violation warrant, he received a hearing by the Parole Board which entered an order on September 19, 1962, declaring him not to be a violator; thereafter all subsequent orders of that administrative body—revocation of parole, continuances, finding him to be a violator and setting his next hearing date to June 13, 1967—were entered without notice or hearing to petitioner (Petition pp. 2-3, R. 3, 4, 7, 8, 10, 11).

ARGUMENT.

I.

IMPORTANT FEDERAL QUESTIONS ARE INVOLVED

Each and every one of the questions raised by his petition (Pet. pp. 8-9) are important federal questions; they have been acknowledged as such by Respondent thru counsel under "Jurisdiction" (p. 2), have been passed upon by formal order of the court below (Pet. Appendix 1, pp. 15-16), and decided on the hearing which that order was rendered by the trial judge (Pet. Appendix 9, pp. 33-35), that petitioner was not entitled to hearing on arbitrary and capricious acts of the Parole Board.

This Honorable Court in the past has been called upon to decide whether state and federal agencies in various fields have exceeded or abused the powers of their office in violation of the Fourteenth Amendment to the United States Constitution, and have always held the essentials of Due Process of Law are notice and hearing before judgment is rendered. *Riverside Cotton Mills* v. *Menefree*, 237 U.S. 189; *Western Life Ins. Co.* v. *Newport*, 247 U.S. 464; *Royal Drug Co.* v. *Wardell*, 260 U.S. 386. Illinois Courts have recognized this to be the Law of the Land in countless cases too. *Pipe Trades* v. *Rauch*, 2 Ill. 2d 278; *People ex rel. Armanetti, Inc.* v. *City of Chicago*, 415 Ill. 165. The petitioner believes he is entitled to the same Due Process of Law requirements from the Board of Pardon and Paroles on parole revocation proceedings as are other citizens from different administrative agencies.

Illinois courts have never barred the door to the use of *habeas corpus* as suggested by the Respondent (pp. 4-5) where arbitrary or excessive abuse of power is shown.

The contrary is apparent from the very cases he cites as authority. *People ex rel. Castle v. Spivey*, 10 Ill. 2d 586, at pg 593, Mr. Justice Davis said:

> "We have repeatedly held that a court has jurisdiction in a *habeas corpus* proceeding only when the original judgment of conviction was void, *or when something has happened since its rendition to entitle petitioner to release;* and that where the legality of the original imprisonment is not challenged *the inquiry is ordinarily limited to determine whether the maximum term for which the defendant was sentenced has expired.*" (cases cited; emphasis supplied)

and further at p. 594:

> "The record does not disclose the reasons for such action, *but we cannot assume that the board acted without cause, or that its action was purely arbitrary or beyond its powers.*"

still further on p. 595:

> "*People ex rel Day* v. *Lewis*, 376 Ill. 509, involved *original habeas corpus in this court in which petitioner alleged arbitrary forfeiture of good time by the Department of Public Welfare for infractions of rules.* We held that the department had authority to promulgate prison rules; that the prisoner was guilty of five infractions thereof; that this court could not, in a *habeas corpus* proceeding, interfere with the exercise of an administrative function by attempting to substitute its judgment for that of the department; *that this court had jurisdiction to determine whether or not administrative discretion had been abused in the forfeiture of the prisoner's good time;* that there was no abuse by the department: . . ."

> "We further held where the action of the Department of Public Welfare has been taken in conformity with controlling rules, *the courts in habeas corpus will inquire only whether the department officers have acted within their powers.* . . ."

Petitioner is not here seeking review of the Parole Board's decision, he has shown by "clear and convincing evidence" that the parole law and rules made pursuant thereto have arbitrarily and capriciously been ignored by an executive branch of the government; therefore, how can it be assumed that the Pardon and Parole Board properly discharged it official duties? *United States ex rel Harris v. Ragen*, 177 F. 2d 303 (7th Cir., 1949)—(Respondent's Brief, pp. 5); See also: 81 F. Supp. 608.

It has been demonstrated the state's highest court has interpreted the Illinois *Habeas Corpus* Act (Ill. Rev. Stat., 1961, Ch. 65, Sec. 22-2) to be a proper remedy in a case of the type at bar, and the Federal District and Circuit Courts have taken cognizance of this rule. However, in practice, now as in the past, no relief is available by Illinois proceedings, and petitioner relies on the teachings of this Court in *Foster v. Illinois*, 332 U.S. 134 by the claim of denial of due process of law in the obvious absence of a procedural remedy.

II.

A FULL HABEAS CORPUS HEARING WAS WARRANTED

Under the record of this case, the petitioner was not afforded procedural due process by the court below. At the offset of the proceedings on which the motion to dismiss was sustained (Appendix 9, pp. 33-35), the Court precluded any argument in the matter. Subsequently, when counsel endeavored to point out the arbitrary and capricious acts of the Parole Board he was cut off. Counsel's urging for hearing was negatively received. The printed page does not vividly show the concatenation of those proceedings, but ample, it is believed, to show the petitioner

was not granted procedural due process under the circumstance that his liberty was involved. In Illinois, a writ of *habeas corpus* imports verity until impeached, and requires no supporting evidence. *People ex rel. Day v. Lewis*, 376 Ill. 509. A full hearing was requisite under the allegations made to afford petitioner procedural due process of law.

III.

PROPER PARTIES WERE BEFORE THE COURT BELOW

Respondent by counsel is trying to change the "State law and local procedure" with the one ruling *Howell* v. *Haitt*, 199 F. 2d 584 (5th Cir., 1952), but the State Supreme Court on original *habeas corpus* proceedings has held it to be a proper remedy to review administrative orders and have done so in each of the following cases:

People v. *Hill*, 344 Ill. 246;
Purdue v. *Ragen*, 375 Ill. 98;
People ex rel. Milburn v. *Niersthcimer*, 401 Ill. 465;
People ex rel. Miller v. *Niersthcimer*, 402 Ill. 599;
People ex rel. Prina v. *Robinson*, 409 Ill. 105.

In each of the above cases the Warden of the State Penitentiary where the prisoner was confined was properly named the respondent, though the rulings, orders, acts, decisions, events or omissions passed upon involved the Parole Board.

CONCLUSION

As there exists great divergence of opinion (See: R. 18-23) as to whether a convicted person is entitled to due process of law on parole revocation matters in the Federal and State Courts of the Land, it is urged this Honorable Court take a stand as a guide to future proceedings.

For the foregoing reasons, it is submitted that this petition for certiorari be granted.

Respectfully submitted,

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Petitioner Pro Se.

SIDNEY TEPPER,
Of Counsel.